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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 594

THE FEDERAL LAND BANK OF ST. LOUIS,
A CORPORATION,

Petitioner,

vs.

A. B. PRIDDY, CIRCUIT JUDGE,

Respondent.

PETITION FOR REHEARING.

Comes now the Federal Land Bank of St. Louis and presents this its petition for a rehearing of the above-entitled cause, and, in support thereof, respectfully shows:

This Court decided, in its opinion rendered on April 29, 1935, that the Supreme Court of Arkansas was not in error in holding that your petitioner was subject to attachment and garnishment. In view of the statements made in the opinion we most respectfully ask that this case be reheard for the following reasons:

Grounds for Rehearing.

I.

This Court held that since the Federal Farm Loan Act does not show plainly the extent to which Federal land banks are amenable to the summary process of attachment,

"it is necessary to ascertain, by examination of the purposes and organization of the federal farm loan system, whether immunity from attachment is granted by implication. See *Shaw* v. *Oil Corp.*, 276 U. S. 575."

The *Shaw* case announced the following rule (p. 579): where Federal instrumentalities (Indian lands) "were so intimately connected with the performance of governmental functions as clearly to require independence of all state control • • • *nothing short of an express declaration by Congress would have subjected them to state"* interference (by taxation). *"Governmental agencies similarly held to be exempt are national banks."* (Italics added.)

In the *Priddy* case, the Court reaffirmed its previous rulings that Federal land banks *"are instrumentalities of the federal government, engaged in the performance of an important governmental function."* We therefore respectfully submit that the rule in the *Shaw* case, when applied to government instrumentalities of this character, renders them immune from state interference as a matter of right, and that such immunity continues, *unless taken away by the express words of a Federal statute.*

In the *Shaw* case this principle was held to apply even to *national banks*, which are (1) privately owned, (2) in which the Government owns no stock, (3) in which there are no directors appointed by the Government to *"represent the public interest,"* and (4) *none of whose loans are required to be approved by a public officer.* These restrictions upon Federal land banks are not badges or indicia of private corporations.

In other decisions this Court has held repeatedly that a statute will not be given a construction *"which would in any degree disarm the Government of a power which has been confided to it to be used for the general good • • • unless plain and express words indicated that such was the inten-*

tion of the Legislature." *Brown* v. *Duchesne*, 19 How. 183; *Pine Hill Co.* v. *U. S.*, 259 U. S. 191; *N. Y.* v. *Irving Trust Co.*, 288 U. S. 329; *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152; *U. S. v. Stevenson*, 215 U. S. 190; *U. S.* v. *Herron*, 87 U. S. 251; *Dollar Savings Bank* v. *U. S.* 86 U. S. 227; and *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554. In case of doubt, a construction must be adopted most advantageous to the interest of the Government. *Cornell* v. *Coyne*, 192 U. S. 418; *Hannibal, etc. R. Co.* v. *Packet Co.*, 125 U. S. 260; and *Reichelderfer* v. *Quinn*, 287 U. S. 315.

Jurisdiction of suits against the United States does not exist in the absence of specific authority, and liability to suit will not be found by implication. *Nassau Smelting Works* v. *U. S.*, 266 U. S. 101; *Davis* v. *O'Hara*, 266 U. S. 314; *Schillinger* v. *U. S.*, 155 U. S. 163; *Price* v. *U. S. and Osage Indians*, 174 U. S. 373 and *Belknap* v. *Schild*, 161 U. S. 10 (Injunction suit).

II.

This Court held that "*federal land banks, although concededly federal instrumentalities, possess also some of the characteristics of private business corporations.*"

We respectfully submit that the attributes of private corporations, mentioned in the opinion, do not make these banks private institutions. As this Court stated, in *Osborn* v. *U. S. Bank*, 9 Wheat. 738:

> The bank "is not an instrument which the government found ready made • • • *but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business.* • • • The appellants endeavor to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corporation • • •. While they

seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business" (p. 860). *"To destroy or preserve the one, is to destroy or preserve the other"* (p. 862). "If the trade of the bank be essential to its character, as a machine for the fiscal operations of the government, that trade must be as exempt from state control as the actual conveyance of the public money. * * No distinction is taken between them" (p. 867).

Their functions are limited by the Act to (1) The making of first mortgage loans on farm lands at low rates of interest; (2) The selling of such mortgages to the public through the medium of tax exempt bonds; (3) The furnishing of a market for Government bonds; and (4) Acting as depositaries of public moneys and as financial agents of the Government. § 14 of the Act provides that *no Federal land bank shall have power "to transact any banking or other business not expressly authorized."*

The temporary authorization for the acquisition of non-voting stock by private investors was inserted with the hope that the Treasury would not have to pay the original stock subscription amounting to $9,000,000. The few privately owned shares have long since been retired. (p. 2, Sen. Rpt. No. 144, 64th Cong. 1st Sess.; Remarks of Senator Hollis, Cong. Rec. 53, 64th Cong. 1st Sess. p. 6856).

Farm loan associations and farmers who borrowed directly from the banks were required to subscribe to stock so as to give them a "personal stake" in the system,[1] to provide a cushion against losses, to make it possible for dividends,[2] if any, to further reduce interest rates, and to

[1] P. 10, Sen. Rpt. No. 144, 64th Cong. 1st Sess.

[2] "Expenses and Profits," p. 5, same report. "The land banks are permitted to charge borrowers 1 per cent more for interest than they pay bondholders. * * * This margin of 1 per cent on the amount of unpaid principal outstand-

relieve the Government of the burden of financing the whole operation from the Treasury of the United States.

Under the limited authority to acquire the necessary real estate for the conduct of their business, and the right to hold, *for only five years,* lands acquired through defaulted loans, the banks may not speculate in real estate (§ 13). The power to appoint agents and pay them (§ 15); to make contracts (§ 4); to charge interest (§§ 12, 13); to charge fees covering only the *actual cost of* services rendered (§ 13); to borrow money and pay interest thereon (§ 13) *are all powers possessed by the Government itself,* and no bank could have carried out the purposes of its creation without them.

We feel, however, that the other provisions of sections 12 and 13 indicate the public character of these institutions:

> An appropriation of $50,000,000 was authorized to permit the banks to extend the time of payment of mortgages held by them, and this contribution must be repaid to the Government whenever, *in the opinion of the Land Bank Commissioner,* the banks have resources available therefor. (§ 13—Tenth).
>
> The *mandate* in paragraph "Twelfth" (§ 13) reduced the interest rate on extended payments. *Principal payments* were automatically postponed for a period of five years by the "Eleventh" paragraph of the same section.
>
> Under the "Twelfth" paragraph of §12 the interest rate on all mortgages previously received from associations was automatically reduced to 4½ per cent, and interest on mortgages placed through agents was reduced to 5 per cent. An appropriation of $15,000,000 was made to compensate the banks for this loss of revenue.

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ing is available to the bank for its expenses and earnings." Through the payment of dividends "the earnings of the system go to the borrowers, and its cooperative character is assured."

Under the Federal Farm Mortgage Corporation Act the banks are permitted to use the Government's credit to the extent of $2,000,000,000 (§ 13—Fifteenth).

We respectfully submit that these legislative pronouncements and the contributions from the Treasury, point to but one conclusion—that the banks are in name and in fact purely Federal agencies.

III.

The Court points out that except for the general authority to sue, given creditors in section 4, the only other remedy available to them is the appointment of a receiver under the provisions of section 29, and that such remedy "*is available only through the favorable action of the Farm Credit Administration.*"

A judgment against a Federal land bank settles a disputed claim and becomes an absolute obligation. If the bank is solvent, the judgment will be paid unless it is assumed that public officials will fail to do their duty. Failure of the four government directors to vote for prompt payment of a judgment would be ground for removal from office (§§ 4, 17). Government examiners will report any unpaid judgments, and it must be assumed that appropriate action will be taken by the Farm Credit Administration (The *Earle cases*, 178 U. S. 449, 456).

If the bank is *insolvent* when the judgment is rendered, it would be the duty of the Land Bank Commissioner to place it in the hands of a receiver. We agree with the Court that this is a matter of grace, but if the Commissioner fails to act in a proper case a court of equity would have authority to grant relief. *Brusselback* v. *Chicago Joint Stock Land Bank*, 69 F. (2d) 598; certiorari denied, 292 U. S. 641.

Furthermore, this Court has said that if a *public corporation is insolvent*, a judgment creditor should not be per-

mitted to levy an execution on its property and thereby obtain a preference over other creditors, or interfere with the performance of important governmental functions, and that receivership is his proper remedy if the judgment is not paid. *Gue* v. *Tide Water Canal Co.*, 24 How. 257; *Buncombe County Commissioners* v. *Tommey*, 115 U. S. 122, 134; *Hammock* v. *Loan and Trust Company*, 105 U. S. 77, 90; and *East Alabama Railway Company* v. *Doe*, 114 U. S. 340, 353.

We respectfully submit that these remedies are sufficient to protect the interests of creditors, without giving them further the summary remedy of attachment, garnishment, and execution.

IV.

The Court referred to a number of cases involving the Fleet Corporation, in support of the conclusion that "*Immunity of corporate government agencies from suit and judicial process, and their incidents, is less readily implied than immunity from taxation.*"

The Fleet Corporation was incorporated as a private business concern under the laws of the District of Columbia.* In the early days of its existence the United States could have sold its entire stock interests therein and the Corporation would have lost every vestige of its sovereignty. Because of its private character, it was necessary to review each act of the Corporation to determine whether it was acting as a Government instrumentality or as a free agent.

On the other hand, petitioner was incorporated by the United States and the Federal Farm Loan Act is its charter. Federal officers control its every act done in performance

* *Sloan Shipyards v. U. S., etc. Fleet Corp.*, 258 U. S. 549.

of its governmental functions.* All stock and paid-in surplus subscribed by the government may be retired, but such circumstance would not change the fundamental character of the bank. Stock ownership alone is not the determining factor. This Court stated in *U. S. Bank* v. *Planters' Bank*, 9 *Wheat.* 904, 907: "as a member of a corporation, a government never exercises its sovereignty" except to the extent of powers *"expressly given by the incorporating act"*; but the rule is different, as announced one day previously (*Osborn* v. *U. S. Bank*), with respect to the sovereign immunities of *a corporation established as an agency of the government creating it.*

We submit that these facts bring the banks under the principles announced in *The Davis*, 10 Wall. 15, namely, that no proceeding *in rem* may be instituted to recover property when in the possession of officers or agents of the government charged therewith.

V.

The Court based its decision in part on the fact that the remedies afforded to creditors of Federal land banks are identical with those given to creditors of *joint stock land banks, and stated that the latter have no attributes "to suggest that they are government instrumentalities."*

We respectfully remind the Court of its previous ruling that joint stock land banks are agencies designed to *"serve the governmental purposes declared by Congress in their creation."* (*Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180, a case involving the validity of bonds issued by a joint stock land bank).

Except for their stock being owned privately, and their directors being elected by the stockholders, the operations of joint stock land banks are subject to the same strict

* See synopsis of the various provisions of the Act set forth on pp. 12 to 15 of Petitioner's Brief.

regulation as Federal land banks, and their operations are more closely supervised and controlled than those of national banks, which were referred to in the *Shaw* case, *supra*, as instrumentalities of the Government, "so intimately connected with the performance of governmental functions as clearly to require independence of all state control" (p. 579). Also *Osborn* v. *U. S. Bank, supra.*

Furthermore, Congress has provided $75,000,000 to assist in *orderly liquidation* of the joint stock land banks, and $25,000,000 to permit them to extend the time of payment of obligations due from their respective borrowers. (§§ 29, 30, 31, Emergency Farm Mortgage Act of 1933; 12 U. S. C. 810, 823—Historical Note). By virtue of the provisions of this Act, the banks may not in the future "issue any tax-exempt bonds or make any farm loans except such as are necessary and incidental to the refinancing of existing loans or bond issues, or to the sale of any [acquired] real estate". (§ 29.)

Joint stock land banks have ceased to exist as going concerns. Under the present law, there is only one system of land banks left to carry out the purposes of the Farm Loan Act: the Federal land banks.

VI.

The Court held that *"liability to suit 'as fully as natural persons' extends by implication to attachment and execution".*

We submit most respectfully that this phrase in section 4 does not purport to prescribe the process by which the bank or its adversary may be hailed into court, or to define the privileges and immunities of either party. Under its provisions, it could not be said that the banks have authority to obtain a judgment against a lunatic (a natural person) by bringing him into court without a guardian.

With respect to the "*'District of Columbia' a body corporate for municipal purposes, with power to contract and be contracted with, to sue and be sued*", this Court said in *District of Columbia* v. *Woodbury* 136 U. S. 450, that the District was subject to suit for damages even though "*none of its officers can pay a judgment against it*" and "*no process against it could enforce payment*". Thus the Court indicated that it did not regard the liability of a public corporation to be sued as synonymous with its liability to summary process of execution. In the same opinion the Court pointed out also (p. 456):

> "Because it was a municipal corporation proper, *as distinguished from a corporation established as an agency of the government creating it*, this court held in the Barnes Case that it was responsible for such negligence * * *." (Italics added.)

This Court has held in substance in other opinions that a Federal land bank is "*a corporation established as an agency of the government creating it.*"

The Court lays some stress upon the fact that national banks are given express immunity from attachment and garnishment.

We respectfully submit that the Congress could have assumed, in view of the "express words" doctrine previously announced by this Court, that it was unnecessary to give the land banks specific immunity from summary process. Added weight is given to this conclusion when we compare the provisions of section 29 of the Farm Loan Act: Upon failure to meet "its outstanding obligations of any description" the bank may be placed in receivership—with the corresponding provision (12 U. S. C. 191) of the National Banking Act: whenever a *judgment* has "remained unpaid for the space of thirty days," a receiver may be appointed.

VII.

In conclusion the Court stated: *"It does not appear that the attachment would directly interfere with any function performed by petitioner as a federal instrumentality."*

We respectfully submit that Petitioner's "free assets" are mere working tools, necessary for the performance of its statutory duties as a federal agency and instrumentality and that this working capital may not be impounded. (*Osborn* v. *United States Bank*, 9 Wheat. 738.)

Conclusion.

For these reasons it is respectfully and earnestly urged that this petition for rehearing be granted, and that the judgment of the Supreme Court of Arkansas be, upon further consideration, reversed.

Respectfully submitted,

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Certificate of Counsel.

I, Peyton R. Evans, one of the counsel for petitioner, do hereby certify that the foregoing petition for a rehearing in this case is presented in good faith and not for delay.

PEYTON R. EVANS,
Counsel for Petitioner.